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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 809

UNITED STATES OF AMERICA *ex rel.* EVSEY S. PETRUSHANSKY, alias PETER GREEN, a fugitive from justice of the United Mexican States,

Relator-Appellant,

against

ANTHONY R. MARASCO, United States Marshal for the Southern District of New York,

Respondent-Appellee.

PETITION FOR REHEARING

EDWIN GOLD,
GOLD, LAZAR & COOPER
Attorney for Petitioner.

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Relator-Appellant,

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Respondent-Appellee.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR REHEARING

Petitioner presents his petition for a rehearing of this Court's order dated March 23, 1964, denying the petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit, and in support thereof, respectfully shows:

Grounds for Rehearing

In the petitioner's application for a writ of certiorari, he did not go into a detailed presentation of the facts upon which Commissioner Bishop based his findings of criminality, although such facts are set forth in the opinions below and alluded to in the Respondent's Brief.

The statement of facts set forth in Judge Marshal's decision is an accurate recital and the petitioner hereby incorporates them by reference into this petition for rehearing.

The petitioner has just received from Mexico an affidavit dated April 2, 1964, by Joel David Kaplan, who is presently in custody in that Country, which refutes the sole incriminating portion of the record submitted to Commissioner Bishop involving this petitioner and must be brought to the attention of this Court. A copy of this affidavit is printed at page 5 herein and the original is attached to copy filed with the court.

In order to determine the full effect of this new affidavit, his prior statement must be set forth.

In his affidavit dated March 30, 1962 Kaplan swore that when the petitioner and one Scott returned to the Hotel where he was staying, they told him "Vidal had not fulfilled his part of the deal and Scott had killed him" (Governments S3, 2, pp. 7-8). Now the affidavit submitted on the instant application, dated April 2, 1964, asserts unequivocally that Kaplan never had any conversation with the petitioner concerning the death of Louis Vidal. He further states that the affidavit was made under circumstances constituting coercion by the Mexican authorities. It was just discovered that a statement was made by Kaplan on March 31st, 1962 before the Court in Coyoacan, Mexico which clearly supports this new evidence. This statement was omitted by the Mexican authorities and was not part of the record before the lower courts.

The Commissioner's opinion as well as the decision of Judge Noonan in the District Court (Pet., p. 27) and of Judge Marshal in the Circuit Court (Pet., p. 16), had as its very basis for finding this petitioner extraditable, the affidavit of Kaplan, which implicated the petitioner and which is now rendered impotent. This recantation devastates any theory attempting to tie this petitioner to the alleged murder of Louis Vidal.

This new evidence must be viewed in the light of the Mexican authorities laboratory tests made of the alleged instrument of homicide, a Buick automobile, which verifies that the blood scrapings taken from the Buick were from twelve to fifteen days old at the time the report was made. The report was made and attested to on December 2, 1961. Thus the earliest the blood could have been in the Buick was on November 17, 1961 when the petitioner was admittedly out of Mexico for at least three days.

To further support the petitioner's position, a laboratory report prepared by the same authorities revealed that the dirt found in and about the Buick was a different color from the dirt found in the vicinity of the grave.

When we take this unimpeachable scientific evidence and Kaplan's recantation along with the testimony of the two witnesses that testified they had spoken to the deceased at a time when petitioner was not within the confines of Mexico and subsequent to the purported date of the alleged murder, it is submitted that there is now not one scintilla of competent legal evidence which could establish probable cause to believe that the petitioner was guilty of any crime of murder.

It is respectfully submitted that the Mexican authorities are proceeding on a theory that petitioner may have some information concerning the murder of Vidal and are using this proceeding to bring an innocent American citizen into their jurisdiction in order to subject him to an inquisition.

The Supreme Court has always been zealous in protecting the constitutional rights and civil liberties of our countrymen. This Court should be loath to permit the extradition out of this Country of an American citizen under these circumstances, without further proceedings by the Commissioner.

The conclusions drawn in the Respondent's Brief (Res. p. 7) concerning their analysis of petitioner's guilt, are completely dispelled in view of the foregoing.

The submission of this new evidence in the present posture of this case, which has not previously been presented or urged, constitutes intervening circumstances of such substantial and controlling effect as to be within the purview and contemplation of Rule 58 and would warrant this Court to grant this petition for a rehearing.

CONCLUSION

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted, and that, upon further consideration, writ of certiorari issue to the United States Court of Appeals for the Second Circuit.

EDWIN GOLD,
GOLD, LAZAR & COOPER,
Attorney for Petitioner.

I, EDWIN GOLD, counsel for the above-named petitioner, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Rule 58, subdivision 2 of the Rules of this Court.

EDWIN GOLD,
Counsel for Petitioner.

APPENDIX

Affidavit of Joel Kaplan.

I, JOEL KAPLAN, being duly sworn, deposes and says:

That the statement signed by me for the Mexican authorities on March 30, 1962 wherein I said that Mr. Yevsie Petrushansky came into my room at the Hotel El Diplomatico and stated to me that Mr. Scott shot Louis M. Vidal was false.

I never had a conversation with Mr. Petrushansky concerning the alleged death of Louis M. Vidal.

The reason that I signed the above mentioned statement was because of the fact I was kept without sleep for many days and was continuously questioned by the authorities during this time, further there was a language barrier and the statement was not taken verbatim, all of which caused me to sign an instrument that was prepared by the authorities.

This present statement is consistant with the statement made by me before the Court in Coyoacan on the 31st day of March, 1962 and was the truth then and is the truth now.

Dated: Mexico City, Mexico D.F.
April 2, 1964.

JOEL KAPLAN.

I, Victor Velesquez, State that I was present when Joel Kaplan, whose signature is known to me, signed and executed the above statement.

Lic. VICTOR VELESQUEZ.